IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

ST.Rev..No. 132 of 2005()

TA.473/2003 of COMMR.KERALA AGR.IT & STAT,TVM. DT.7.1.2005
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PETITIONER

C.ALEX, RAILWAY CONTRACTOR,
SAIJI BHAVAN, IRUMPANANGADU P.O.

BY ADV. SRI.KURIAN GEORGE KANNAMTHANAM (SR.)
SRI.SERGI JOSEPH THOMAS
SRI.V.C.JAMES

RESPONDENT:

THE STATE OF KERALA, REPRESENTED
BY COMMISSIONER OF LAW, ERNAKULAM.

BY SPL. GOVERNMENT PLEADER SRI.V.V.ASOKAN (TAXES)

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 02/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.S. RADHAKRISHNAN, AG.C.J. & M.N. KRISHNAN,J.

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S.T. Rev. NO. 132 OF 2005

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Dated this the 2nd day of April, 2007.

J U D G M E N T

Radhakrishnan, Ag.C.J.

This revision is preferred against the order of the Sales Tax Tribunal, Thiruvananthapuram in T.A.473/03 dated 27th January, 2005. The assessee is a railway contractor. He claimed complete exemption from tax liability in respect of the turnover for the assessment year 1998-99. On the contra, the assessment authority after examining the books of accounts found that the turnover of the assessee is taxable and therefore he is not entitled for tax exemption. It is also stated by the Appellate Authority that the amount received against supply of materials is sale and the assessees have produced certificate from the Deputy Chief Engineer (Construction) Southern Railway, Trivandrum dated 26.3.01 that the stone supplied by the assessee is hand broken hard stone. Aggrieved by that order the assessee filed appeal before the first appellate authority. That appeal was also dismissed by the appellate authority stating that the appellant has not produced any evidence to prove that the broken metal was

purchased from non-mechanised crushing unit. Hence, the Appellate Authority held that the assessment of turnover is correct. Against that decision the assessee has filed second appeal before the Appellate Tribunal, Thiruvananthapuram. The Tribunal also concurred with the view of the first Appellate Authority by holding that the assessee did not produce any evidence at the time of the hearing of the case in support of his contentions.

2. The learned counsel for the assessee submitted that sales turnover of the granite metals purchased from non mechanised crushing unit is exempted from tax. Therefore, the assessee must be given an opportunity to produce evidence in this respect before the Tribunal. We also perused Annexure VIII order passed by the Sales Tax Appellate Tribunal dated 1st August, 2005 in respect of the assessment year 1999-2000 wherein the Tribunal has stated that it is appropriate that agreement with the Railway authorities, certificate received from the Deputy Chief Engineer(Construction) and true copy of purchase vouchers are to re-examined by the assessing authority. In the circumstances, we are inclined to set aside the orders passed by the first appellate Authority as well the second Appellate Authority and

remand the matter back to the Tribunal for fresh disposal in accordance with law. We also make it clear that it is open to the assessee to produce all further materials in support of his contentions to establish his claim for exemption.

The S.T.Rev. is disposed of accordingly.

K.S. RADHAKRISHNAN,
ACTING CHIEF JUSTICE.

M.N. KRISHNAN, JUDGE.

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